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09/740,169	12/19/2000	David W. Perrego	416-001	6758

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EXAMINER

THANH, QUANG D

ART UNIT

PAPER NUMBER

3764

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Please find below and/or attached an Office communication concerning this application or proceeding.

8c

Office Action Summary	Application No. 09/740,169	Applicant(s) PERREGO, DAVID W.	
	Examiner Quang D. Thanh	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08/08/2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 16-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☒ Claim(s) 3,6 and 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 08 August 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of claims 16-19 filed on 08/08/2002 is acknowledged. The traversal is on the ground(s) that "the examiner never explains how the originally claimed assembly can be used in a materially different process or the process using the product as claimed can be practiced with another materially different product". This is not found persuasive because the examiner did provide an explanation as stated in the previous office action "In the instant case, the process (group II) for using the product as claimed could be practiced with another materially different product that does not require the focused traction force means or the stand means as recited in group I".

Newly amended claim 16 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: drawn to a traction method for treating inflamed spinal area, classified in class 482, subclass 143.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 16-19 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction

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for examination purposes as indicated is still deemed proper and is therefore made FINAL.

Claim Objections

1. Claims 3, 6-7 are objected to because of the following informalities: "said traction position" lacks antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 4 and 15 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The applicant fails to disclose specifically how the focused traction pressure means (what structure?) would ensure to deliver the predetermined force of about 40% weight (how is a pad capable of delivering this predetermined force?) to the spine of a user.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Chitwood (5,662,597). Chitwood discloses a gravity traction assembly (fig. 1) comprising: (a) frame means 14 and torso harness means 66 coupled to depend from the frame means, (b) the torso harness means being effective to maintain a person in a vertical traction suspension position after the person dons the harness means (figs. 1-2 clearly shows an adjustable inclined table that would place the user in a vertical traction suspension by gravitational force), (d) traction force focusing means 20 attached to the frame means for applying a predetermined amount of focused traction pressure directly to a selected location along a user's spine who is in the vertical traction suspension position (fig. 1).

4. Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by Burton (4,205,665). Burton discloses an apparatus (fig. 2) for spinal traction therapy utilizing the force of gravity. This apparatus has (a) frame means 54 and torso harness means 32, (b) stand means (foot stop 93) mounted to the frame including a first non-traction receiving surface (upper platform 94) on which a person may stand to don the harness and a second partial traction receiving surface (lower platform 96); (c) the harness 32 being effective to suspend a person for a partial traction pressure when the person stand on the second partial traction lower platform 96 (fig. 2); and (inherently understood by the examiner) the partial traction pressure being less than a full traction pressure applied to a person who is in vertical gravity traction suspension position.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 7 and 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson (4,890,604).

Re claims 1 and 10, Nelson discloses a gravity traction assembly (fig. 7) comprising: (a) free standing frame means 122, and (d) focused traction force means 147 adjustably (col. 6, lines 48-52) attached to the frame means for applying a predetermined amount of focused traction pressure directly to a selected location along a user's spine (best seen in fig. 7), except that it does not include torso harness means coupled to flexibly depend from the frame means. However, Nelson suggests that a body strap (torso harness means) can be used if necessary or desirable (col. 7, lines 16-18) and the torso harness means being effective to maintain a person in gravity traction suspension position (fig. 2, col. 5, lines 40-42). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the Nelson's apparatus, as suggested above, to include a torso harness means coupled to the frame means, for the purpose of securing the user relatively to the frame means (fig. 2, col. 5, lines 40-42) if necessary or desirable.

6. Re claim 7, the assembly as defined in claim 1, wherein the frame means 122 is free standing and the harness means 43 depends downwardly from the frame means,

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the focused traction force means 147 being effective to derive the pressure from a portion of the weight of the person in the traction position, and the vertical traction suspension position is a gravity traction suspension position with the person being vertically suspended with the harness means to produce the focus traction pressure (fig. 2 and 7 shows an adjustable inclined table that would place the user in a vertical traction suspension by gravitational force which depending on the degree of inclination as stated in col. 1, lines 48-50)

7. Re claims 11-14, an assembly as defined in claim 10, wherein (claim 11) the frame means 122 includes backboard means 144 (fig. 7) for supporting an upper body portion of the person girded with the harness means 43 and suspended in gravity traction suspension (fig. 2); (claim 12) the backboard means includes the focused traction force means 147 having releasable tighten means 153 for selectively securing the focused traction force means to a plurality of vertical locations along the backboard means (fig. 7, col. 6, lines 50-58); (claim 13) the frame means 122 includes a front rearwardly tilted frame portion including backboard means 144 (fig. 2 and 7) and the focused traction force means 147 includes pad element means 15 (fig. 8, col. 6, lines 52-54) adjustably mounted to the backboard means and releasable tighten means 153 for selectively positioning the pad with respect to the user to undergo traction treatment; and (claim 14) the focus traction force means is effective to direct a traction force equal to a fraction of the person's weight at the selected location along the spine (col. 1, lines 48-52).

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8. Claims 2-6, 8, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson in view of Burton.

9. Re claim 2, Nelson discloses a traction assembly having all the features as claimed, except that it does not have a stand means disposed on the frame means. However, Burton teaches an apparatus for spinal traction therapy utilizing the force of gravity. This apparatus has a foot stop 93 (fig. 5) comprising an upper platform 94 and a lower platform 96 as a safety device to help protect the user from falling if one of the support elements fails (fig. 5, col. 5, lines 35-43). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the Nelson's apparatus, as suggested by Burton, to include a stand means with two platforms, for the purpose of providing a safety device to help protect the user from falling if one of the support elements fails (col. 5, lines 35-43).

10. Re claim 3, Nelson discloses that the predetermined amount of focused traction pressure is derived from the weight of the person who is in the traction position (col. 1, lines 48-50).

11. Re claims 4-6, 8 and 15, (claims 4 and 15 as best understood) Burton further suggests that the predetermined amount of focused traction pressure is equal to about 40% of the weight of the person (see fig. 1, at 90 degree with full gravity traction, the load on the lumbar spine is about 30 kg with respect to a subject of 70kg); (claim 5) Burton discloses a stand means mounted to a frame including a non-traction receiving surface (upper platform 94) and a partial traction receiving surface (lower platform 93), the harness 32 being effective to produce a partial traction pressure equal to a desired

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percentage of a full traction pressure when the person steps from the upper platform to the lower platform (fig. 2); (claim 6) the desired percentage is about 20% (fig. 1, at a partial traction position of 40 degree, the load is about 14kg with respect to a subject of 70kg) of the full traction pressure of about 40% weight of the user; and (claim 8) wherein the selected location along the spine of the person includes an inflamed area of the person's back (col. 3, lines 25-35).

Response to Arguments

12. In response to applicant's argument that the reference Chitwood fails to show "a traction force focusing means for applying a predetermined amount of focused traction pressure directly to a selected location along a user's spine who is in the vertical traction suspension position (fig. 1), the examiner disagrees. Chitwood's traction force focusing means is the head and neck receiving portion 20 comprising a portion 26 at the center to fit and support the cervical curve of a patient's neck (col. 3, line 66 to col. 4, line 5), and since the cervical curve is part of the spine, therefore it comprehends the claimed feature.

13. Regarding applicant's argument that the reference Chitwood does not maintain "a person in a vertical traction suspension position", it is unclear how the applicant disregard the teaching of Chitwood that clearly discloses a gravitational traction device designed to use gravity acting on a patient's body and tending to pull the body downwardly along the inclined surface of the table (col. 1, lines 59-64). Chitwood further reveals that the table can be inclined at an angle of between 10 and 80 degrees

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(col. 2, lines 26-30), therefore Chitwood's table does maintain a person in a vertical traction suspension position.

14. In response to applicant's argument that "Burton's foot stop does not constitute a stand means having a first no-traction receiving surface upon which the patient may stand, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case, Burton clearly shows a stand means 93 having a first surface 94 (upper platform) capable of receiving the patient standing and a second surface 96 (lower platform) also capable of receiving the patient standing (fig. 2).

15. Regarding applicant's argument that the reference Nelson does not maintain "a person in a vertical traction suspension position", it is unclear how the applicant disregard the teaching of Nelson that clearly discloses a gravitational traction device designed to use gravity acting on a patient's body and tending to pull the body downwardly along the inclined surface of the platform thereby maintain a person in a vertical traction suspension position as the angle of inclination increases (col. 1, lines 48-52 and fig. 2).

16. In response to applicant's arguments against the references of Burton and Nelson individually, one cannot show nonobviousness by attacking references

individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion


17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (703) 605-4354. The examiner can normally be reached on Monday-Thursday & alternate Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (703) 308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

Quang D. Thanh
Patent Examiner
Art Unit 3764
July 14, 2003



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